Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

Implementation of Section 25 of the Cable Television Consumer Protection and Competition Act of 1992, Direct Broadcast Satellite Public Service Obligations	)	MM Docket No. 93-25

REPLY COMMENTS OF ECHOSTAR COMMUNICATIONS CORPORATION

EchoStar Communications Corporation ("EchoStar") hereby files its reply comments in the above-captioned proceeding relating to the public service obligations of Direct Broadcast Satellite ("DBS") providers. The purpose of these reply comments is two-fold.

First, EchoStar emphasizes the delicate state of DBS providers (particularly EchoStar) and the attendant need for fair regulation. While EchoStar concurs with the motives inspiring the comments of certain consumer advocate groups, the unduly onerous regulation advocated by these commenters could have grave consequences that they could not have intended: help entrench cable operators in their current dominant positions in the Multi-Channel Video Programming Distribution ("MVPD") market.

Second, the Commission should dismiss the cable interests' efforts to use this proceeding as a vehicle for asking the Commission to rewrite the Communications Act in the name of their perversely defined concept of regulatory parity. It is ironic that the companies dominating the MVPD market, with a market share of almost 90%, should be requesting the imposition of regulatory obligations on their nascent competitors to achieve "parity." The

requests for parity are especially bizarre because they are made in the context of a proceeding implementing a statutory obligation imposed on DBS providers alone.

I. THE COMMISSION SHOULD IMPOSE LIGHT-HANDED REGULATION

DBS providers, and EchoStar in particular, are at a crucial "make-or-break" juncture. In its first one year and one month of service, EchoStar has attracted more than 500,000 subscribers. This subscriber base, and the 5,000,000 total DBS subscribers, still pale, of course, in comparison to the 65,000,000 cable homes. Equally important, none of the operational DBS providers has yet become profitable, partly on account of the astronomical start-up costs required to launch a DBS offering and add satellite capacity. Continued tight control over costs and a rapid increase in EchoStar's subscriber base to reach a minimum critical mass are essential for EchoStar to become a full-fledged MVPD competitor.

EchoStar is in an especially vulnerable situation because it has recently experienced a grave set-back. As the Commission is aware, EchoStar's business plan, its effort to take on cable on a fully equal footing, and its public service planning have all been predicated on its transaction with The News Corporation Limited ("News Corp."). A binding February 19, 1997 agreement between the parties provided, among other things, for a substantial contribution to EchoStar of cash, satellites and spectrum resources, all critical to EchoStar's business plan. Unfortunately, News Corp. has not complied with its contractual obligations, with dramatic consequences for the company at a critical juncture.

That set-back will inevitably require EchoStar to scale down its ambitious public service plan, which would otherwise have likely exceeded the statutory obligations.

Nevertheless, EchoStar still believes that it will be able to release a comprehensive public service plan that should satisfy its Section 25 obligations. At the same time, EchoStar urges the Commission to be flexible in implementing the statutory mandate.

At this time, for example, the Commission should not impose on EchoStar a set-aside exceeding 4% of capacity. Also, the Commission should not impose a "slot-by-slot" requirement. Each DBS provider should be allowed to satisfy the set-aside requirement through any combination of spectrum and/or orbital resources. Section 25 does not require, for example, that capacity be reserved at a "full-CONUS" location. Furthermore, the Commission should refrain from restrictive interpretations of what constitutes "noncommercial programming of an educational or informational nature." 47 U.S.C. § 335 (b)(1). In implementing the capacity set-aside requirement, the Commission should be cognizant that EchoStar, with a current offering of about 130 channels, is significantly disadvantaged in comparison to DIRECTV/USSB with a current offering of about 200 channels. Because of this substantial channel deficit, one marginal channel is much more crucial to EchoStar's ability to compete than an increment of multiple channels for DIRECTV/USSB. Therefore, imposition of the same capacity percentage on EchoStar and DIRECTV would entail greater costs for EchoStar.

Moreover, the Commission should confirm that, under the clear language of the statute, programming provided by "national educational programming suppliers" is not the only type of programming that qualifies towards the statutory obligations of DBS providers. The statute provides that such suppliers are the only ones eligible for the statutory discount, see 47 U.S.C. § 335(b)(3), not that "[e]ligibility for Section 25(b)" is limited to such suppliers, see DAETC Comments at 11. Any "noncommercial programming of an educational and

informational nature" should plainly count towards the Section 25 obligation whether or not it is provided by a national educational programming supplier.

In implementing the statutory discount, the Commission should not exclude from the calculation of "direct costs" the DBS providers' substantial expense of acquiring their permits and building, launching and operating their satellite systems. The Commission's sound DBS policies have been aimed at encouraging DBS permittees to make a substantial investment in DBS satellite systems to promote "effective competition" to cable. It would be ironic and confiscatory if the Commission were to deny DBS providers the ability to recoup even 50% of that investment for a portion of their capacity. Nothing in Section 25 justifies the incremental cost view of "direct costs" advanced by DAETC, see DAETC Comments at 22-24. The vague language from the House Report cited by DAETC cannot be read to contemplate such a view either. Indeed, where Congress intended to confine a communications provider to some version of incremental cost, it has explicitly said so. See, e.g., 47 U.S.C. § 252(d)(2)(A)(ii) (charges for transport and termination of traffic should be based on "the additional costs" of termnating calls).

II. THE COMMISSION SHOULD DISMISS THE CABLE INTERESTS' CALLS FOR PARITY

The scope of this proceeding is clear. To implement the public service obligations imposed on DBS providers by Section 25. Certain cable interests, however, are asking the Commission to engage in a survey of all obligations imposed by the Act on cable operators and impose them on DBS providers as well. See Comments of Time Warner Cable, US West, Inc.

The Commission lacks the jurisdiction to entertain that request. The cable interests appear to make the absurd argument that, because Section 25 instructs the Commission to impose certain obligations on DBS providers "at a minimum," see 47 U.S.C. § 335(a), the sky is the limit. See e.g., Comments of Time Warner Cable at 2 n. 4, 5. This phrase cannot be read, however, as giving the Commission unfettered jurisdictional license to import obligations imposed on other parties anywhere else in the Act and tack them on to the DBS public service obligations. If Congress had intended to impose must-carry, leased access or PEG requirements on DBS providers, it would have said so, and would not have carefully circumscribed the applicability of these provisions only to certain dominant MVPDs. See, e.g., 47 U.S.C. § 614(a).

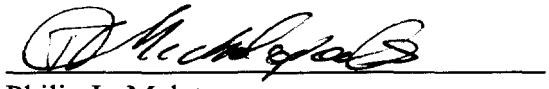
Even if the cable interests' requests were within the scope of this proceeding and the Commission had the power to entertain them, they would be irrational. Congress has imposed the obligations that cable operators would like exported to DBS providers for a clear reason -- that cable operators possess market power. As the Commission's last Cable Report found, cable operators still possess market power and DBS operators have not yet been able to introduce effective competition in the MVPD market.[1/] Nor would DBS providers be able to erode cable dominance if the cable interests succeeded at crippling them with unwarranted obligations.

[1/] See In the Matter of Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming, Third Annual Report, FCC 96-496 (rel. Jan. 2, 1997).

III. CONCLUSION

For the foregoing reasons, the Commission should refrain from unduly onerous regulation that might inhibit DBS providers' ability to compete, and should ignore the dominant MVPDs' complaints about lack of parity with fragile new entrants.

Respectfully submitted,



David K. Moskowitz
Senior Vice President and General Counsel
EchoStar Communications Corporation
90 Inverness Circle East
Englewood, CO 80112

Karen E. Watson
Director Governmental Relations
EchoStar Communications Corporation
1850 M Street, N.W., Suite 1070
Washington, D.C. 20036

Philip L. Malet
Pantelis Michalopoulos
Steptoe & Johnson LLP
1330 Connecticut Avenue, N.W.
Washington, D.C. 20036
(202) 429-3000

Attorneys for EchoStar
Communications Corporation

CERTIFICATE OF SERVICE

I hereby certify that on this 30th day of May, 1997, I caused copies of the foregoing pleading to be served by hand delivery to the following:

Chairman Reed E. Hundt
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Commissioner Rachelle Chong
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Commissioner James Quello
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Commissioner Susan Ness
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Peter Cowhey, Acting Chief
International Bureau
Federal Communications Commission
2000 M Street, N.W., Room 800
Washington, D.C. 20554

Thomas S. Tycz
International Bureau
Federal Communications Commission
2000 M Street, N.W., Room 811
Washington, D.C. 20554

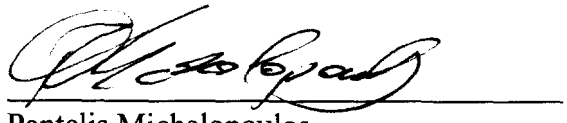
Fern Jarmulnek
International Bureau
Federal Communications Commissi
2000 M Street, N.W.
Washington, DC 20554

Suzanne Hutchings
International Bureau
Federal Communications Commissi
2000 M Street, N.W., Room 505A
Washington, D.C. 20554

John Stern
International Bureau
Federal Communications Commissi
2000 M Street, N.W., Room 819A
Washington, D.C. 20554

Christopher Murphy
International Bureau
Federal Communications Commissi
2000 M Street, N.W., Room 579
Washington, D.C. 20554

Brian Carter
International Bureau
Federal Communications Commissi
2000 M Street, N.W., Room 509
Washington, D.C. 20554



Pantelis Michalopoulos